

Exhibit A



Matt Schwartz <thecolor12@gmail.com>

Your follow-up questions

Ostick, William A <OstickWA@state.gov>
To: Mattathias Schwartz <thecolor12@gmail.com>

Fri, Oct 14, 2011 at 6:10 PM

Matt -- See below additional responses to your questions. We would be pleased to get a briefing from you next week. Let's connect Monday to try to schedule a day and time.

Tivoli Gardens Aerial Surveillance and U. S. - Jamaican Cooperation

- The effort to apprehend Christopher Coke through the Government of Jamaica's security operation in west Kingston was entirely an operation of the Jamaican government, and the Jamaican government independently made the decisions about how to carry out the arrest during that security operation in west Kingston.
- In response to the Government of Jamaica's request for logistical support of its security operation in west Kingston, U.S. law enforcement agents requested that a U.S. Customs and Border Protection plane already stationed near Jamaica and routinely used for interdiction purposes in the region gather information from aerial surveillance of activity on the ground. That information was provided to U.S. law enforcement officers accredited to the U.S. Embassy in Jamaica and Jamaican authorities. Despite references to "officer safety" in the formal aircraft request, U.S. Government personnel were not involved in the security operation into west Kingston.
- At no time did any U.S. Drug Enforcement Administration, U.S. Marshals Service, or any other American law enforcement representatives make operational decisions, as this was a Jamaican government operation.
- We cannot provide any additional information on the P-3 Orion plane used for

- Embassy Kingston will not further comment on privileged or confidential government-to-government communications.

Reporting of Deaths of U.S. Citizens Abroad and Mr. Andre Smith

- The Department of State Bureau of Consular Affairs updates statistics on the deaths of U.S. citizens abroad by non-natural causes on its website when the information can be confirmed with an official Certificate of Death issued by the host government. The Department's statistics will not include a case until it is closed at Post by the issuance of a Consular Report of Death Abroad, following the host government's issuance of a death certificate. For this reason, the information on the website should not be considered a statistically complete account of U.S. citizen deaths in foreign countries.
- U.S. Embassy Kingston and the mother of Andre Smith have requested a Certificate of Death from the Jamaican authorities for Mr. Smith.

Sub-Contractor Radcliffe "Mickey" Freeman

- Radcliffe "Mickey" Freeman was a carpenter for a private contractor and not directly hired by Embassy Kingston.
- U.S. Embassy Kingston conducts a police name check on all subcontractors against local police records.

The J.C.F and Leahy Vetting

- The Department of State uses the Leahy Vetting Program to ensure foreign security force units implicated in gross violations of human rights are excluded from receiving U.S. government assistance and training.

Allegations of Unlawful Killings

- The U.S. Embassy in Kingston became aware of allegations of unlawful killings through local media reporting soon after the May 24 security operation.
- Embassy Kingston is awaiting the results of the formal Jamaican government inquiry into the events in Tivoli Gardens and will not comment further until the findings of the report have been published.
- In the 2010 Country Report on Human Rights Practices for Jamaica, the U.S. Department of State reported human rights concerns about alleged extrajudicial killings by members of Jamaica's security forces.

This email is UNCLASSIFIED.

Exhibit B

U.S. Department of Justice



United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

August 30, 2011

BY HAND

Stephen H. Rosen
100 Almeria Avenue, Suite 205
Coral Gables, FL 33134

Frank A. Doddato
666 Old Country Road
Suite 501
Garden City, New York 11530

Re: **United States v. Christopher Michael Coke,**
S17 07 Cr. 971 (RPP)

Dear Messrs. Rosen & Doddato:

On the understandings specified below, the Office of the United States Attorney for the Southern District of New York ("this Office") will accept a guilty plea from Christopher Michael Coke ("the defendant") to Counts One and Two of the above-referenced Information.

Count One charges the defendant with racketeering conspiracy, in violation of Title 18, United States Code, Section 1962(d). This charge carries a maximum sentence of twenty years' imprisonment, a maximum term of 5 years' supervised release, a maximum fine, pursuant to Title 18, United States Code, Section 3571, of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to persons other than the defendant as a result of the offense, and a mandatory \$100 special assessment.

Count Two charges the defendant with conspiracy to commit assault with a dangerous weapon in aid of racketeering, in violation of Title 18, United States Code, Section 1959(a)(6). Count Two carries a maximum penalty of 3 years' imprisonment; a maximum term of supervised release of one year; a maximum fine, pursuant to Title 18, United States Code, Section 3571, of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to persons other than the defendant as a result of the offense; and a mandatory \$100 special assessment.

The total maximum term of imprisonment on Counts One and Two is 23 years.

In consideration of the defendant's plea to the above offenses, the defendant will not be further prosecuted criminally by this Office (except for criminal tax violations as to which this Office cannot, and does not, make any agreement) for (1) his leadership of the Presidential Click, a criminal organization based in Kingston, Jamaica, that operated in the New York area and elsewhere, and his participation in the distribution of narcotics, the dealing in firearms without a license, and assault, in connection with conducting the affairs of the Presidential Click organization, as charged in Count One of the Information, from at least 1994 up to and including in or about June 2010 and (2) his participation in a conspiracy to commit an assault with a dangerous weapon in aid of racketeering in or around May 2007 in connection with the stabbing of a marijuana trafficker in the Bronx, New York, as charged in Count Two of the Information. In addition, at the time of sentencing, the Government will move to dismiss any open Counts against the defendant. The defendant agrees that with respect to any and all dismissed charges he is not a "prevailing party" within the meaning of the "Hyde Amendment," Section 617, P.L. 105-119 (Nov. 26, 1997), and will not file any claim under that law.

The defendant further agrees that a plea to the above-referenced charges is consistent with the Rule of Specialty set forth at Article XIV of the Extradition Treaty Between the Government of the United States of America and the Government of Jamaica (June 14, 1983) and waives any right he might otherwise have to challenge these charges under that Treaty or any other applicable law.

In consideration of the foregoing and pursuant to United States Sentencing Guidelines ("U.S.S.G." or "Guidelines") Section 6B1.4, the parties hereby stipulate to the following:

A. Offense Level

1. The Guidelines provisions in effect as of November 1, 2010, apply to this case.

Count One: Racketeering Conspiracy

2. The Guideline applicable to the offense charged in Count One of the Information is U.S.S.G. § 2E1.1. As set forth below, because the offense level applicable to the underlying racketeering activity (narcotics trafficking conspiracy) is greater than level 19, the applicable offense level for Count One is calculated using U.S.S.G. § 2D1.1.

3. The defendant conspired to distribute at least 3,000 but less than 10,000 kilograms of marijuana, resulting in an initial base offense level of 34, pursuant to U.S.S.G. § 2D1.1(c)(3).

4. The defendant conspired to distribute at least 15 but less than 50 kilograms of cocaine. Pursuant to the conversion tables set forth in U.S.S.G. § 2D1.1, Application Note 10(E), 1 gram of cocaine is the equivalent of 200 grams of marijuana; therefore 15 kilograms of cocaine is the equivalent of 3,000 kilograms of marijuana. Accordingly, combining the amount of marijuana

that the defendant conspired to distribute (at least 3,000 kilograms) with the marijuana-equivalent of the amount of cocaine that the defendant conspired to distribute (at least 3,000 kilograms) results in a total of 6,000 kilograms of marijuana. Therefore, the total base offense level for Count One, pursuant to U.S.S.G. § 2D1.1(c)(3), is level 34.

5. Because the defendant received firearms from his co-conspirators in connection with his narcotics trafficking activity, firearms were possessed and therefore the base offense level is increased by two levels, pursuant to U.S.S.G. § 2D1.1(b)(1).

6. Pursuant to U.S.S.G. § 3B1.1(a), because the defendant was an organizer and leader of a criminal activity that involved five or more participants or was otherwise extensive, 4 levels are added.

7. Pursuant to U.S.S.G. § 3C1.2, because the defendant recklessly created a substantial risk of death and serious bodily injury to another person in the course of fleeing from law enforcement officers, 2 levels are added.

8. Accordingly, the total offense level for Count One is 42.

Count Two: Conspiracy to Commit Assault in Aid of Racketeering

9. The Guideline applicable to the offense charged in Count Two of the Information is U.S.S.G. § 2E1.3. As set forth below, because the offense level applicable to the underlying crime and racketeering activity (aggravated assault) is greater than level 12, the applicable offense level for Count Two is calculated using U.S.S.G. § 2A2.2.

10. Pursuant to U.S.S.G. § 2A2.2(a), the base offense level for Count Two is 14.

11. Pursuant to U.S.S.G. § 2A2.2(b)(2)(B), there is a 4-level increase because the conspiracy involved assault with a dangerous weapon.

12. Pursuant to U.S.S.G. § 2A2.2(b)(3)(B), there is a 5-level increase because the victim of the assault sustained serious bodily injury.

13. Pursuant to U.S.S.G. § 3B1.1(a), because the defendant was an organizer and leader of a criminal activity that involved five or more participants or was otherwise extensive, 4 levels are added.

14. Pursuant to U.S.S.G. § 3C1.2, because the defendant recklessly created a substantial risk of death and serious bodily injury to another person in the course of fleeing from law enforcement officers, 2 levels are added.

15. Accordingly, the total offense level for Count Two is 29.

Grouping Analysis

16. Pursuant to U.S.S.G. § 3D1.2(b), Counts One and Two shall be grouped together in a single group, because the counts involve the same victim and more than two acts or transactions connected by a common criminal objective and constituting part of a common scheme or plan.

17. Pursuant to U.S.S.G. § 3D1.3(a), the offense level is 42, the highest offense level of the counts in the group.

Acceptance of Responsibility

18. Assuming the defendant clearly demonstrates acceptance of responsibility, to the satisfaction of the Government, through his allocution and subsequent conduct prior to the imposition of sentence, a 2-level reduction will be warranted, pursuant to § 3E1.1(a), U.S.S.G. Furthermore, assuming the defendant has accepted responsibility as described in the previous sentence, an additional 1-level reduction is warranted, pursuant to § 3E1.1(b), U.S.S.G, because the defendant gave timely notice of his intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for trial and permitting the Court to allocate its resources efficiently.

In accordance with the above, the applicable Guidelines offense level on Counts One and Two of the Information is 39.

B. Criminal History Category

Based upon the information now available to this Office (including representations by the defense), the defendant has no criminal history points, as explained below:

1. On or about May 9, 1988, the defendant was convicted in Wake County Supreme Court (North Carolina) of possession of stolen property, a felony, and received a suspended sentence of three years' imprisonment. Where a sentence is suspended, the term "sentence of imprisonment" refers only to the portion that was not suspended, pursuant to U.S.S.G. § 4A1.2. The defendant's criminal history record reflects that he was arrested on this charge in February 1988 and given a suspended sentence in May 1988. Therefore the portion of his sentence that was not suspended is approximately three months and thus the sentence of imprisonment did not exceed one year and one month. As a result, and because this sentence was imposed more than ten years prior to the defendant's commencement of the instant offense in 1999, it is not counted and therefore results in no criminal history points, pursuant to U.S.S.G. § 4A1.2(e)(2).

2. On or about December 16, 1988, the defendant was convicted in the Eastern District of North Carolina of transportation of a firearm in interstate commerce by an illegal alien, in violation of Title 18, United States Code, Section 922(g)(5), and being an illegal alien, in violation

of Title 8, United States Code, Section 1325. The defendant was sentenced to the period of time served from June 9, 1988 to December 16, 1988 (a period of approximately six months) plus ten additional days. Because this sentence was imposed more than ten years prior to the defendant's commencement of the instant offense in 1999, it is not counted and therefore results in no criminal history points, pursuant to U.S.S.G. §4A1.2(e)(2).

In accordance with the above, the defendant is in Criminal History Category I.

C. Sentencing Range

Based upon the calculations set forth above, the defendant's stipulated Guidelines range is 262 to 327 months' imprisonment. However, because Counts One and Two have a combined statutory maximum of 276 months' imprisonment, the effective Guidelines range is 262 to 276 months' imprisonment (the "Stipulated Guidelines Range"). In addition, after determining the defendant's ability to pay, the Court may impose a fine pursuant to U.S.S.G. § 5E1.2. At Guidelines level 39, the applicable fine range is \$25,000 to \$250,000.

The parties agree that neither a downward nor an upward departure from the Stipulated Guidelines Range set forth above is warranted. Accordingly, neither party will seek any departure or adjustment pursuant to the Guidelines that is not set forth herein. Nor will either party suggest that the Probation Office consider such a departure or adjustment under the Guidelines, or suggest that the Court *sua sponte* consider any such departure or adjustment.

The parties agree that either party may seek a sentence outside of the Stipulated Guidelines Range, suggest that the Probation Office consider a sentence outside of the Stipulated Guidelines Range, and suggest that the Court *sua sponte* consider a sentence outside of the Stipulated Guidelines Range, based upon the factors to be considered in imposing a sentence pursuant to Title 18, United States Code, Section 3553(a).

Except as provided in any written Proffer Agreement(s) that may have been entered into between this Office and the defendant, nothing in this Agreement limits the right of the parties (i) to present to the Probation Office or the Court any facts relevant to sentencing; (ii) to make any arguments regarding where within the Stipulated Guidelines Range (or such other range as the Court may determine) the defendant should be sentenced and regarding the factors to be considered in imposing a sentence pursuant to Title 18, United States Code, Section 3553(a); (iii) to seek an appropriately adjusted Guidelines range if it is determined based upon new information that the defendant's criminal history category is different from that set forth above; and (iv) to seek an appropriately adjusted Guidelines range or mandatory minimum term of imprisonment if it is subsequently determined that the defendant qualifies as a career offender under U.S.S.G. § 4B1.1. Nothing in this Agreement limits the right of the Government to seek denial of the adjustment for acceptance of responsibility, *see* U.S.S.G. § 3E1.1, regardless of any stipulation set forth above, if the defendant fails clearly to demonstrate acceptance of responsibility, to the satisfaction of the Government, through his allocution and subsequent conduct prior to the imposition of sentence.

Similarly, nothing in this Agreement limits the right of the Government to seek an enhancement for obstruction of justice, *see* U.S.S.G. § 3C1.1, regardless of any stipulation set forth above, should it be determined that the defendant has either (i) engaged in conduct, unknown to the Government at the time of the signing of this Agreement, that constitutes obstruction of justice or (ii) committed another crime after signing this Agreement.

It is understood that pursuant to U.S.S.G. § 6B1.4(d), neither the Probation Office nor the Court is bound by the above Guidelines stipulation, either as to questions of fact or as to the determination of the proper Guidelines to apply to the facts. In the event that the Probation Office or the Court contemplates any Guidelines adjustments, departures, or calculations different from those stipulated to above, or contemplates any sentence outside of the stipulated Guidelines range, the parties reserve the right to answer any inquiries and to make all appropriate arguments concerning the same.

It is understood that the sentence to be imposed upon the defendant is determined solely by the Court. It is further understood that the Guidelines are not binding on the Court. The defendant acknowledges that his entry of a guilty plea to the charged offenses authorizes the sentencing court to impose any sentence, up to and including the statutory maximum sentence. This Office cannot, and does not, make any promise or representation as to what sentence the defendant will receive. Moreover, it is understood that the defendant will have no right to withdraw his plea of guilty should the sentence imposed by the Court be outside the Guidelines range set forth above.

It is agreed (i) that the defendant will not file a direct appeal; nor bring a collateral challenge, including but not limited to an application under Title 28, United States Code, Section 2255 and/or Section 2241; nor seek a sentence modification pursuant to Title 18, United States Code, Section 3582(c), of any sentence within or below the Stipulated Guidelines Range of 262 to 276 months' imprisonment and (ii) that the Government will not appeal any sentence within or above the Stipulated Guidelines Range. This provision is binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, it is agreed that any appeal as to the defendant's sentence that is not foreclosed by this provision will be limited to that portion of the sentencing calculation that is inconsistent with (or not addressed by) the above stipulation. The parties agree that this waiver applies regardless of whether the term of imprisonment is imposed to run consecutively to or concurrently with the undischarged portion of any other sentence of imprisonment that has been imposed on the defendant at the time of sentencing in this case. The defendant further agrees not to appeal any term of supervised release that is less than or equal to the statutory maximum.

The defendant hereby acknowledges that he has accepted this Agreement and decided to plead guilty because he is in fact guilty. By entering this plea of guilty, the defendant waives any and all right to withdraw his plea or to attack his conviction, either on direct appeal or collaterally, on the ground that the Government has failed to produce any discovery material, *Jencks* Act material, exculpatory material pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), other than information establishing the factual innocence of the defendant, and impeachment material pursuant to *Giglio*

v. *United States*, 405 U.S. 150 (1972), that has not already been produced as of the date of the signing of this Agreement.

The defendant recognizes that because he is not a citizen of the United States, his guilty plea and conviction make it very likely that his deportation from the United States is presumptively mandatory and that, at a minimum, he is at risk of being deported or suffering other adverse immigration consequences. The defendant acknowledges that he has discussed the possible immigration consequences (including deportation) of his guilty plea and conviction with defense counsel. The defendant affirms that he wants to plead guilty regardless of any immigration consequences that may result from the guilty plea and conviction, even if those consequences include deportation from the United States. It is agreed that the defendant will have no right to withdraw his guilty plea based on any actual or perceived adverse immigration consequences (including deportation) resulting from the guilty plea and conviction. It is further agreed that the defendant will not challenge his conviction or sentence on direct appeal, or through litigation under Title 28, United States Code, Section 2255 and/or Section 2241, on the basis of any actual or perceived adverse immigration consequences (including deportation) resulting from his guilty plea and conviction.

It is further agreed that should the conviction(s) following the defendant's plea(s) of guilty pursuant to this Agreement be vacated for any reason, then any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this agreement (including any counts that the Government has agreed to dismiss at sentencing pursuant to this Agreement) may be commenced or reinstated against the defendant, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed.

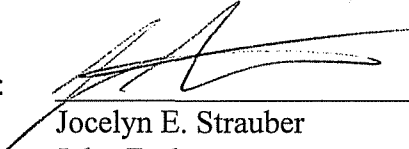
It is further understood that this Agreement does not bind any federal, state, or local prosecuting authority other than this Office.

Apart from any written Proffer Agreement(s) that may have been entered into between this Office and defendant, this Agreement supersedes any prior understandings, promises, or conditions between this Office and the defendant. No additional understandings, promises, or conditions have been entered into other than those set forth in this Agreement, and none will be entered into unless in writing and signed by all parties.

Very truly yours,

PREET BHARARA
United States Attorney

By:


Jocelyn E. Strauber
John Zach
Assistant United States Attorneys
(212) 637-1034/2410

APPROVED:

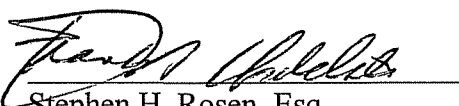

Elle Honig
Deputy Chief, Organized Crime Unit

AGREED AND CONSENTED TO:

Christopher Coke
Christopher Michael Coke

8/30/11
DATE

APPROVED:


Stephen H. Rosen, Esq.
Frank A. Doddato, Esq.
Attorneys for Christopher Michael Coke

8/30/11
DATE

Exhibit C

U.S. Customs and Border Protection
FOIA Division
799 9th Street NW, Mint Annex
Washington, DC 20229-1181

Mattathias Schwartz
630 NW Culpepper Terrace
Portland, OR 97210

Re: Freedom of Information Act Request

July 25, 2011

Dear Freedom of Information Act Officer:

This is a request under the Freedom of Information Act. I hereby request copies of the following records:

-Video recordings of a raid on Tivoli Gardens, a neighborhood in Kingston, Jamaica, that took place on the morning of May 24, 2010. These records were made from a Department of Homeland Security P-3 Orion aircraft that was flying over Kingston that day.

-Video recordings and any written accounts relating in whole or in part to any gun battles that took in Kingston, Jamaica between May 20, 2010 and June 1, 2010.

-Flight records showing the location and registration numbers of all Department of Homeland Security aircraft that were in Jamaican airspace between May 20, 2010 and June 1, 2010.

As the FOIA requires, please release all reasonably segregable nonexempt portions of documents.

In order to help to determine my status to assess fees, you should know that I am a representative of the news media affiliated with The New Yorker magazine. I have enclosed a copy of my assignment letter from The New Yorker.

I request a waiver of all fees for this request. Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in my commercial interest. The New Yorker magazine has asked me to write an article about the violence in Jamaica that occurred in May 2010 during which more than seventy people died. This article will contribute significantly to public understanding of this event.

I agree to pay reasonable duplication fees for the processing of this request.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

As I am making this request as a journalist and this information is of timely value, I would appreciate your communicating with me by telephone, rather than by mail, if you have questions regarding this request. If you have any questions regarding this request, please contact me at 267-288-7444, 347-927-0777, or thecolor12@gmail.com.

I am willing to pay fees for this request up to a maximum of \$100. If you estimate that the fees will exceed this limit, please inform me before processing my request.

I look forward to your reply within twenty days, as the statute requires. Thank you for your assistance with this request.

Sincerely,

Mattathias Schwartz

cc: Shari Suzuki, Chief, Disclosure Law Branch, DHS shari.suzuki@dhs.gov

Exhibit D

1300 Pennsylvania Avenue NW
Washington, DC 20229



**U.S. Customs and
Border Protection**

September 26, 2011

Mattathias Schwartz
The New Yorker
[REDACTED]

Dear Mr. Schwartz:

This letter is a final response to your Freedom of Information Act (FOIA) request to U.S. Customs and Border Protection (CBP) requesting copies of the following records:

- Video recordings of a raid on Trivoli Gardens, a neighborhood in Kingston, Jamaica, that took place on the morning of May 24, 2010. These records were made from a Department of Homeland Security P-3 Orion aircraft that was flying over Kingston that day.
- Video recording and any written accounts relating in whole or in part to any gun battles that took place in Kingston, Jamaica between May 20, 2010 and June 1, 2010.
- Flight records showing the location and registration numbers of all Department of Homeland Security aircraft that were in Jamaican airspace between May 20, 2010 and June 1, 2010.

After a careful review of your request, CBP determined that a three-page record and video are responsive to your request. The video is exempt from disclosure pursuant to Title 5 U.S.C. 552 (b)(6), (b)(7)(C), (b)(7)(D), (b)(7)(E), (b)(7)(F) while the three page record is partially releasable pursuant to Title 5 U.S.C. 552 (b)(6), (b)(7)(C), (b)(7)(E) per below:

Exemption (b)(6) exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right privacy.

Exemption (b)(7)(C) protects records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are suspects, witnesses, or investigators, in not being unwarrantably associated with alleged criminal.

Exemption ((b)(7)(D) pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to disclose the identities of confidential sources.

Exemption (b)(7)(E) protects records compiled for law enforcement purposes, the release of which would disclose techniques and/or procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

Exemption (b)(7)(F) permits the government to withhold all information about any individual when disclosure of information about him could reasonably be expected to endanger the life or physical safety of any individual. This exemption also protects physical security at critical infrastructure sites.

You have a right to appeal the decision. Should you wish to do so, you must send your appeal and a copy of this letter, within 60 days of the date of this letter, to: [REDACTED]

[REDACTED], following the procedures outlined in the DHS regulations under Title 6 C.F.R. § 5.9. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

The Office of Government Information Services (OGIS) also mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. If you wish to contact OGIS, you may email them at [REDACTED] or call [REDACTED].

[REDACTED]

Sincerely,

[REDACTED]

Enclosures

Exhibit E

U.S. DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection
SIGNIFICANT INCIDENT REPORT
CBP Directive 3340-025C

Air Marine Enforcement Items:

- None

1. DATE OF INCIDENT: 5/24/2010	LOCATION OF INCIDENT: Homestead, FL	SIR NUMBER: (b)(7)(E) (0)
TIME OF INCIDENT: 10:00 AM		
REPORTED TO COMMISSIONER'S SITUATION ROOM VIA PHONE ON:		
DATE: 5/24/2010	TIME: 10:12 PM	TO: (b)(6), (b)(7)(C)
2. REPORTING OFFICE: Office of Air and Marine	DFO/SECTOR: National Air Security Operations	POE/STATION: P-3 Operations Center Corpus Christ
PERSON MAKING REPORT: (b)(6), (b)(7)(C)		
OFFICE PHONE: (b)(6), (b)(7)(C)	CELL PHONE: (b)(6), (b)(7)(C)	FAX NUMBER: (b)(6), (b)(7)(C)
POINT OF CONTACT: (b)(6), (b)(7)(C)		
OFFICE PHONE: (b)(6), (b)(7)(C)	CELL PHONE: (b)(6), (b)(7)(C)	FAX NUMBER: (b)(6), (b)(7)(C)

3. Type of Incident: ☒ ON DUTY ☐ OFF DUTY

(b)(7)(E)

4. SYNOPSIS: (USE CONTINUATION SHEET IF NECESSARY)

See Attached Continuation

SEIZURE TYPE:	QUANTITY:	VALUE:
NUMBER OF ARRESTS:	MALE:	FEMALE:
		CITIZENSHIP:
5. NOTIFICATIONS MADE:		
1. <input checked="" type="checkbox"/> TELEPHONIC REPORT TO COMMISSIONER'S SITUATION ROOM (b)(7)(E) 5/24/2010 10:12 PM		
2. <input type="checkbox"/>		
3. <input type="checkbox"/>		
6. INJURIES/FATALITIES:		
NAME AND EXTENT OF INJURY:	AGENT	EAP ADVISED
1.		
2.		
NAME OF FATALITIES:		
1.		
2.		
7. ACTION TAKEN:		

- Suspect still at large. P-3 (b)(7)(E) support requested for an additional two days to facilitate the apprehension of suspect.

8. MEDIA INTEREST EXPECTED:

Very high, National news services are covering the story.

CBP FORM 6 (01/05)

SIGNIFICANT INCIDENT REPORT Continuation Sheet

Page 2 of 3

DATE OF INCIDENT: 5/24/2010

LOCATION OF INCIDENT:

SIR NUMBER:

TIME OF INCIDENT: 10:00 AM

Homestead, FL

(b)(7)(E)

Synopsis: (cont.):

On 24 May 2010, OM370 a P-3 Long Range Tracker (LRT) assigned to the P-3 Operations Center, Corpus Christi, TX conducted (b)(7)(E) operations over Kingston, Jamaica at the request of and in support of the Drug Enforcement Administration (DEA) Kingston Country Office. The request to the Office of Air and Marine was for an aerial surveillance vehicle to support the DEA in serving an extradition warrant and the extraction of Christopher's Coke, the alleged head of the Shower Posse. Suspect is supported by other gangs which have barricaded themselves in a local village (Tivoli Gardens) rigged to high-voltage wires and home-made gasoline bombs. Surveillance support is needed to increase officer safety.

At approximately 1400Z, Omaha 370 was cleared to initiate an orbit overland above the southwestern area of Kingston, Jamaica and conduct surveillance around 1758N 07648W (in the Tivoli Gardens section of Kingston). After 3.75 hours, Omaha 370 began a search of the surrounding neighborhood. At approximately 1745Z, several Armored Personnel Carriers and bulldozers were located (b)(7)(E)

(b)(7)(E) The vehicles and equipment removed a number of roadway barricades near 1758N 07648W. Omaha 370 also observed approximately 40 armed Jamaican soldiers/law enforcement dressed in camouflage raiding most of the surrounding buildings and houses. Multiple vehicle fires and building fires were also observed throughout the Tivoli Gardens and surrounding area. At 1840Z, six of the Jamaican military personnel were observed on top of a building at 1800N 07648W. After deploying orange smoke on the roof of this building, the military personnel were observed in the prone position apparently in an attempt to avoid incoming small-arms fire. The source of this small arms fire could not be determined. Additionally, several groups of people were seen running around and between buildings in an attempt to avoid the military/LE personnel. No arrests were observed during the flight. (b)(7)(E)

(b)(7)(E) Arrest results are pending. (b)(7)(E) had extended operations to observe the increased activity and required refueling (b)(7)(E) Omaha 370 landed (b)(7)(E) refueled and returned (b)(7)(E) with a final landing at 2345z after 12.0 hours of flight time. (b)(7)(E)

(b)(7)(E) All scenes were continuously recorded (b)(7)(E)

(b)(7)(E)

CBP FORM 6 (01/05) cont

SIGNIFICANT INCIDENT REPORT
Continuation Sheet

Page 3 of 3

DATE OF INCIDENT: 5/24/2010

LOCATION OF INCIDENT:

SIR NUMBER:

TIME OF INCIDENT: 10:00 AM

Homestead, FL

(b)(7)(E)

Exhibit F

THE
NEW YORKER

4 TIMES SQUARE
NEW YORK, N.Y. 10036-7441

Lynn Oberlander
General Counsel

Tel: (212)286.5857

Fax: (212)286.5025

Lynn_Oberlander@newyorker.com



FOIA Appeals
Policy and Litigation Branch
U.S. Customs and Border Protection
799 Ninth Street, N.W.
Washington, D.C. 20229-1179

**FREEDOM OF INFORMATION ACT APPEAL
2011F13093**

November 10, 2011

To Whom It May Concern:

This is an appeal on behalf of Mattathias Schwartz under the Freedom of Information Act, 5 U.S.C. § 552.

On July 25, 2011, Mattathias Schwartz made a FOIA request to your agency for the following:

- Video recordings of a raid on Tivoli Gardens, a neighborhood in Kingston, Jamaica, that took place on the morning of May 24, 2010, made from a Department of Homeland Security P-3 Orion aircraft.
- Video recordings and any written accounts relating to any gun battles that took place in Kingston, Jamaica between May 20, 2010, and June 1, 2010.
- Flight records showing the location and registration numbers of all Department of Homeland Security aircraft that were in Jamaican airspace between May 20, 2010, and June 1, 2010.

On September 26, 2011, your agency denied Mr. Schwartz's request for the video recordings based on exemptions from Title 5 U.S.C. §552 (b)(6), (b)(7)(C), (b)(7)(D), (b)(7)(E), and (b)(7)(F). Copies of the initial request and denial are attached.

Exemption (b)(6) states that an agency is not required to disclose "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. §552(b)(6). The referenced exemptions under (b)(7) state that an agency is not required to disclose records or information that:

(C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential

THE NEW YORKER



basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual.

Nonetheless, disclosure of records may be permitted under the Privacy Act, exception 6, which allows for the disclosure of records required by § 552, the Freedom of Information Act ("FOIA"). "At the heart of FOIA is a policy strongly favoring public disclosure of information in the possession of federal agencies." *Families for Freedom v. U.S. Customs and Border Protection*, 2011 U.S. Dist. LEXIS 63829, at *13 (S.D.N.Y. June 16, 2011) (internal citations and quotations omitted).

EXEMPTIONS (b)(6) and (b)(7)(c)

Exemptions (b)(6) and (b)(7)(C) require a court to balance the personal privacy interest against the public's interest in disclosure. *National Archives and Records Admin. v. Favish*, 541 U.S. 157, 162 (2004). Although the language in these two exemptions does differ, "the privacy inquiry for each is essentially the same." *Seized Property Recovery, Corp. v. U.S. Customs and Border Protection*, 502 F.Supp.2d 50, 56 (D.D.C. 2007). Thus, the privacy interest in withholding the video footage requested must be balanced against the public's interest in disclosure.

Disclosure is warranted under Exemption (b)(6) as there is no cognizable privacy interest in the video recording of the raid and subsequent gun battles. "The purpose of Exemption 6 is to protect individuals from the injury and embarrassment that can result from the unnecessary disclosure of personal information." *Families for Freedom*, 2011 U.S. Dist. LEXIS 63829, at * 19 (internal quotations omitted). "If no substantial privacy interest is established, however, the court must weight the potential harm to privacy interests against the public interest in disclosure of the requested information." *Id.* In this situation there is no substantial privacy interest implicated in the video recordings. There is no evidence that the recordings contain or constitute any personnel or medical files, or any other information that might cause injury or embarrassment if released. Accordingly, reliance on exemption (b)(6) is misplaced.

Similarly, exemption (b)(7)(c) does not preclude disclosure here. Pursuant to the exemption, the Agency is not required to disclose information that would constitute an unwarranted invasion or personal privacy. There is no evidence that

THE NEW YORKER



the recordings contain any information of a private nature. Ostensibly they show the actions of U.S. government representatives (and others) engaged in public activities that were visible to hundreds of other individuals. Any privacy interest is de minimus.

Notwithstanding the lack of any privacy interest, there is a significant public interest in the details of these gun battles and raid on Tivoli Gardens, as noted in the SIGNIFICANT INCIDENT REPORT (attached) which states that there is "very high" media interest expected as "[n]ational news services are covering the story." More than seventy people were killed in this raid and the gun battles in the Tivoli Gardens neighborhood in Jamaica. There has been widespread speculation regarding the United States government's involvement with the gun battles that occurred during this time period.

Moreover, the U.S. government has been criticized for its involvement in these operations by the Jamaican government. For example, Jamaican Prime Minister Bruce Golding stated that, "U.S. Embassy officials displayed a 'belligerent attitude' toward his government." McFadden, David, "Jamaica PM: US Embassy Officials 'harassed' His Gov't to Hand Over Alleged Drug Kingpin" *Canadian Press*, Mar. 24, 2011. Given the number of deaths and the Jamaican government's criticism, there is "more than a bare suspicion" of government officials acting negligently or improperly. *National Archives*, 541 U.S. 174. When balancing the privacy concerns against the public's interest in the government's involvement, it is clear that the balance tips in favor of the public interest; and disclosure is also warranted under (b)(7)(C). *Id.*

EXEMPTION (b)(7)(D)

Exemption (b)(7)(D) allows exemption from disclosure when the records requested, "could reasonably be expected to disclose the identity of a confidential source." 5 U.S.C. §552(b)(7)(D). There is no evidence of a confidential source in the records requested. The video recordings requested pertain to gun battles and a raid made on the Tivoli Gardens neighborhood in Kingston, Jamaica. In order to rely on this exemption there must be a confidential source. *See Kuzma v. I.R.S.*, 775 F.2d 66, 68 (2d Cir. 1985) ("in order to avail itself of the exemptions contained in subsections (b)(7)(C) and (b)(7)(D) of 5 U.S.C. § 552 it would have to provide additional evidence that its agents would be endangered if their identities were revealed"). Therefore, unless there is a confidential source revealed on the video recordings and additional evidence that the source would be endangered if his/her identity was revealed the recordings must be disclosed and reliance on exemption (b)(7)(D) is unwarranted.

THE NEW YORKER

**EXEMPTION (b)(7)(E)**

Exemption (b)(7)(E) allows exemption for the records requested when the release “would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.” 5 U.S.C. § 552(b)(7)(E). In this situation there is no evidence that the release of video recordings taken from the air of Kingston, Jamaica would disclose any techniques, procedures or guidelines. *See Families for Freedom*, 2011 U.S. Dist. LEXIS 63829, at * 27 (holding that statistics do not qualify as techniques, procedures, or guidelines).

Furthermore, even if these recordings do contain techniques, procedures, or guidelines there is no evidence that release of these videos “could reasonably be expected to risk circumvention of the law.” Mr. Schwartz plans to use these videos to assist in writing his article for *The New Yorker* magazine. These videos will merely aid Mr. Schwartz in writing an informative article. To the extent that portions of the video recordings risk circumvention of the law, those portions may be redacted (*See e.g., Families for Freedom*, 2011 U.S. Dist. LEXIS 63829, at *27).

EXEMPTION (b)(7)(F)

Exemption (b)(7)(F) permits exemption from disclosure when disclosure “could reasonably be expected to endanger the life or physical safety of any individual.” 5 U.S.C. § 552(b)(7)(F). This exemption has been used to prevent disclosure of the names of special agents and law enforcement officers. *See Amro v. U.S. Customs Service*, 128 F.Supp.2d 776, 789 (E.D.Pa. 2001) (holding that the Drug Enforcement Agency could withhold the names of special agents and law enforcement officers pursuant to (b)(7)(F)). There is no evidence that disclosure of these records would identify any law enforcement officers who have not already been identified. To the extent the officers were involved in the raid, their presence was already made public. Furthermore, to the extent that names or identities of U.S. Customs and Border Protection agents or others are released by the videos and could reasonably be expected to endanger their life or safety, those names/identities may be redacted. Without evidence that the requested video recordings would reasonably be expected to endanger specific people the requested video recordings must be disclosed.

I trust that on reconsideration you will reverse the decision denying Mr. Schwartz’s request and grant this request. As we have made this request on behalf of a journalist and this information is of significant timely value, I would appreciate your expediting the consideration of this appeal in every way possible.

THE NEW YORKER



I certify that my statements concerning the need for expedited release of video recordings and flight records are true and correct to the best of my knowledge and belief. Thank you for your assistance.

Sincerely,



Lynn Oberlander

CC: Mattathias Schwartz
Nicholas Thompson

Exhibit G

1300 Pennsylvania Avenue NW
Washington, DC 20229



**U.S. Customs and
Border Protection**

DIS-3 OT:RR:RDL:FAPL
H195040ptl

FEB - 8 2012

Lynn Oberlander, Esq.
General Counsel
The New Yorker
4 Times Square
New York, New York 10036

RE: Freedom of Information Act Appeal; File 2011F13093;
Mattathias Schwartz; Tivoli Gardens

Dear Ms. Oberlander:

This is in response to your letter, dated November 10, 2011, written on behalf of Mattathias Schwartz, in which you appeal the decision of the US Customs and Border Protection (CBP), Freedom of Information Act (FOIA) Division to his initial FOIA request.

In his initial request, Mr. Schwartz had asked for copies of the following records:

"Video recordings of a raid on Tivoli Gardens, a neighborhood in Kingston, Jamaica, that took place on the morning of May 24, 2010. These records were made from a Department of Homeland Security P-3 Orion aircraft that was flying over Kingston that day.

Video recordings and any written accounts relating in whole or in part to any gun ballets that took in Kingston, Jamaica between May 20, 2010 and June 1, 2010.

Flight records showing the location and registration numbers of all Department of Homeland Security aircraft that were in Jamaican airspace between May 20, 2010 and June 1, 2010."

The CBP FOIA Division responded to Mr. Schwartz on September 26, 2011, (file 2011F13093) providing him with a three-page record which was a

Significant Incident Report which discussed the event which was the subject of Mr. Schwartz's request. Certain portions of the Significant Incident Report were withheld pursuant to Exemptions (b)(6), (b)(7)(C) and (b)(7)(E) of the FOIA (5 U.S.C. §552 (b)(6), (b)(7)(C), (b)(7)(E)). The FOIA Division further responded that it had located videos which were responsive to the request. However, the videos were withheld in their entirety pursuant to Exemptions (b)(6), (b)(7)(C), (b)(7)(D), (b)(7)(E), and (b)(7)(F).

Your appeal focuses on CBP's withholding the videos which were requested. The appeal letter addresses each of the exemptions which had been cited as the basis for denying release of the materials.

We have reviewed the FOIA Division file and the video records which are the subject of your appeal and report the following information. We have learned that although the videos were filmed by a CBP-operated aircraft, as is noted in the Significant Incident Report which was released to you, the videos were created at the request of and in support of the US Drug Enforcement Administration (DEA). Once the filming had been completed, ownership of the videos was transferred to the DEA. Therefore, for purposes of the FOIA, the videos are not CBP records to either release or withhold. According to established law, each federal agency or component is solely responsible for releasing its own records. This is because the owner of the records is best able to determine whether the information contained in the records is exempt from disclosure. Accordingly, we have referred your request and appeal concerning the Tivoli Garden videos to the DEA for processing and direct response to you.

In the event that you are dissatisfied with the disposition of your appeal, you may obtain judicial review of this decision pursuant to the provisions of 5 U.S.C. §552(a)(4)(B) in the United States District Court in the District in which your client resides, in the District where the agency records are situated, or in the United States District Court for the District of Columbia.

As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001

E-mail: ogis@nara.gov
Telephone: 301-837-1996
Facsimile: 301-837-0348
Toll-free: 1-877-684-6448

Sincerely,

A handwritten signature in black ink, appearing to read 'Shari Suzuki', written in a cursive style.

Shari Suzuki, Chief
FOIA Appeals, Policy & Litigation Branch

Exhibit H

Freedom of Information Operations Unit (SARO)
Drug Enforcement Administration
700 Army Navy Drive
Arlington, VA 22202

Mattathias Schwartz
Eleven St. Mark's Ave.
Apt. 4R
Brooklyn, NY 11217

Re: Freedom of Information Act Request, with Requests for Fee Waiver and Expedited Processing

May 30, 2012

Dear Freedom of Information Act Officer:

This is a request under the Freedom of Information Act. I hereby request copies of the following records:

1. All video recordings and digital images of a raid on Tivoli Gardens, a neighborhood in Kingston, Jamaica, that took place on the morning of May 24, 2010. These records include, but are not limited to, video feed shot and recorded by a P-3 Long Range Tracker (LRT) assigned to the P-3 Operations Center in Corpus Christi, Texas and flown by the Department of Homeland Security (DHS) with video feed recorded and obtained by the Drug Enforcement Administration (DEA). In response to a similar FOIA request I submitted to the DHS last year, the DHS confirmed earlier this year that it did indeed create such videos at the DEA's behest and that the DEA is now the owner of said videos. The DHS response is enclosed herein.
2. All video recordings, digital images, and written accounts or briefings of military or security operations in Tivoli Gardens on May 25, 2010 and May 26, 2010. These include records relating to operations conducted by the Jamaican security forces, the DEA, or other U.S. agencies.
3. All records relating to the deployment of DEA officers to Jamaica in May 2010 or June 2010 for the purpose of tracking, apprehending, and/or extraditing Christopher "Dudus" Coke to the United States, and/or assisting the Jamaican authorities with this goal, as well as all records relating to their operations during this deployment.

As the FOIA requires, please release all reasonably segregable nonexempt portions of request records.

In order to help to determine my status to assess fees, you should know that I am a representative of the news media, affiliated with The New Yorker magazine. I have enclosed a copy of my assignment letter from The New Yorker magazine as well as a

copy of "A Massacre in Jamaica," a story on this subject that appeared in the print magazine in December of 2011. The magazine has asked me to continue investigating the Coke extradition for the purposes of publishing future articles on the New Yorker website and possibly the print magazine as well.

Pursuant to 28 C.F.R. § 16.11(k), I request a waiver of all fees for this request. Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in my commercial interest. This article will contribute significantly to public understanding of the Coke extradition and violence around Tivoli Gardens in May 2010, during which more than seventy people died.

If my request is denied in whole or part, I ask that you justify all denials or redactions by reference to specific exemptions of the Act. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

As I am making this request as a journalist and this information is of timely value, I would appreciate your communicating with me by telephone, rather than by mail, if you have questions regarding this request. If you have any questions regarding this request, please contact me at 267-288-7444, 347-927-0777, or thecolor12@gmail.com.

I am willing to pay fees for this request up to a maximum of \$100. If you estimate that the fees will exceed this limit, please inform me before processing my request.

Pursuant to 28 C.F.R. § 16.5(d), I ask that you consider giving this request Expedited Processing. My compelling need is as follows: I am a member of the news media investigating the extradition of an alleged drug lord, as well as alleged extrajudicial killings that took place in Kingston, Jamaica in May of 2010. Some of these allegations can be found in the enclosed article, and in "Jamaica: Tivoli Killings One Year On," a report released by Amnesty International on May 23, 2011. This is a breaking news story, as it continues to receive extensive coverage from the Jamaican and U.S. news media, and the Jamaican government has an ongoing public investigation into these matters led by the Office of the Public Defender under a mandate from the Jamaican Parliament.

I hereby certify that the above statements are true and accurate to the best of my knowledge.

I look forward to your determination on the request for Expedited Processing within ten calendar days and your determination on the request for records within twenty business days, as law requires. Thank you for your assistance with this request.

Sincerely,

Mattathias Schwartz

cc: Tracy Schmalder, Director, Office of Public Affairs, Department of Justice, 950
Pennsylvania Avenue, NW, Washington DC 20530-0001

cc: Lynn Oberlander, General Counsel, The New Yorker, 4 Times Square, New York,
New York 10036

Exhibit I



U.S. Department of Justice
Drug Enforcement Administration
FOI/Records Management Section
8701 Morrisette Drive
Springfield, Virginia 22152

JUN 04 2012

Case Number: 12-00021-FR

Subject: FREEDOM OF INFORMATION ACT APPEAL; TIVOLI GARDENS VIDEOS

Referred to DEA by: U.S. CUSTOMS AND BORDER PROTECTION

Mattathias Schwartz
The New Yorker
630 NW Culpepper Terrace
Portland, Oregon 97210

Dear Mr. Schwartz:

This letter responds to your Freedom of Information/Privacy Act (FOI/PA) request dated July 25, 2011, addressed to the U.S. Customs and Border Protection (CBP), but forwarded to the Drug Enforcement Administration (DEA), Freedom of Information/Privacy Act Unit (SARF), for review and processing. DEA has completed its preliminary review of your request letter, and is in receipt of six (6) DVD diskettes pursuant to your Freedom of Information/Privacy Act request to the (CBP).

A determination has been made to deny your request pursuant to subsections of the Privacy Act and/or Freedom of Information Act referenced at the end of this letter. The exemption number(s) indicated by a mark appearing in the block to the left of the subsection cited constitutes the authority for withholding the deleted material. An enclosure to this letter explains these exemptions in more detail.

The rules and regulations of the Drug Enforcement Administration applicable to Freedom of Information Act requests are contained in the Code of Federal Regulations, Title 28, Part 16, as amended. They are published in the Federal Register and are available for inspection by members of the public.

Case Number: 12-00021-FR


Page 2

If you wish to appeal any denial of your request, you must make your appeal in writing and it must be received by the Office of Information Policy within sixty (60) days of the date of this letter pursuant to 28 C.F.R. § 16.9. The appeal should be sent to the following address, with the envelope marked "FOIA Appeal":

DEPARTMENT OF JUSTICE
OFFICE OF INFORMATION POLICY
NYAV BUILDING, 11TH FLOOR
WASHINGTON, D.C. 20530

If you have any questions regarding this letter, you may contact FOI Specialist Denise Gutrick on (202) 307-7628.

Sincerely,



Katherine L. Myrick, Chief
Freedom of Information/Privacy Act Unit
FOI/Records Management Section

Number of pages withheld: 6 DVD'S

Number of pages released: 0

Number of pages referred: 0

Number of pages consulted: 0

APPLICABLE SECTIONS OF THE FREEDOM OF INFORMATION AND/OR PRIVACY ACT:

**Freedom of Information Act
5 U.S.C. 552**

<input type="checkbox"/> (b)(1)	<input type="checkbox"/> (b)(5)	<input checked="" type="checkbox"/> (b)(7)(C)
<input type="checkbox"/> (b)(2)	<input type="checkbox"/> (b)(6)	<input checked="" type="checkbox"/> (b)(7)(D)
<input type="checkbox"/> (b)(3)	<input checked="" type="checkbox"/> (b)(7)(A)	<input checked="" type="checkbox"/> (b)(7)(E)
<input type="checkbox"/> (b)(4)	<input type="checkbox"/> (b)(7)(B)	<input checked="" type="checkbox"/> (b)(7)(F)

**Privacy Act
5 U.S.C. 552a**

<input type="checkbox"/> (d)(5)	<input type="checkbox"/> (k)(2)
<input checked="" type="checkbox"/> (j)(2)	<input type="checkbox"/> (k)(5)
<input type="checkbox"/> (k)(1)	<input type="checkbox"/> (k)(6)

FREEDOM OF INFORMATION ACT
SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) Information which is currently and properly classified pursuant to Executive Order in the interest of the national defense or foreign policy.
- (b)(2) Materials related solely to the internal rules and practices of DEA.
- (b)(3) Information specifically exempted from disclosure by another federal statute.
- (b)(4) Privileged or confidential information obtained from a person, usually involving commercial or financial matters.
- (b)(5) Inter-agency or intra-agency documents which are subject to a privilege, such as documents the disclosure of which would have an inhibitive effect upon the development of policy and administrative direction, or which represent the work product of an attorney, or which reflect confidential communications between a client and an attorney.
- (b)(6) Materials contained in sensitive records such as personnel or medical files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
- (b)(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings; (B) would deprive a person of a right to a fair trial or an impartial adjudication; (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy; (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis; and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source; (E) would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual.

PRIVACY ACT
SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) Materials compiled in reasonable anticipation of a civil action or proceeding.
- (j)(2) Material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals.
- (k)(1) Information which is currently and properly classified pursuant to Executive Order in the interest of the national defense or foreign policy.
- (k)(2) Material compiled during civil investigations for law enforcement purposes.
- (k)(5) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to an express promise that his identity would be held in confidence, or pursuant to an implied promise of confidentiality if such information was furnished prior to September 27, 1975.
- (k)(6) The substance of tests used to determine individual qualifications for appointment or promotion in Federal Government Service.

Exhibit J



U.S. Department of Justice
Drug Enforcement Administration
FOI/Records Management Section
8701 Morrisette Drive
Springfield, Virginia 22152

JUN 21 2012

Case Number: 12-00354-F

Subject: ALL VIDEO RECORDINGS AND DIGITAL IMAGES OF A RAID ON TIVOLI GARDENS, A NEIGHBORHOOD IN KINGSTON, JAMAICA, THAT TOOK PLACE ON THE MORNING OF MAY 24, 2010, ETC.

Mattathias Schwartz
The New Yorker
630 NW Culpepper Terrace
Portland, Oregon 97210

Dear Mr. Schwartz:

This letter responds to your Freedom of Information/Privacy Act (FOI/PA) request dated May 30, 2012, addressed to the Drug Enforcement Administration (DEA), Freedom of Information/Privacy Act Unit (SARF), seeking access to information regarding the above subject.

Your request has been opened and assigned the above case number. Please include this case number when corresponding with this office.

This letter confirms your obligation that by filing your request, you have agreed to pay all applicable fees charged under 28 C.F.R. § 16.11, up to \$25.00. No fees are due at this time.

A determination has been made to deny your request pursuant to subsections of the Privacy Act and/or Freedom of Information Act referenced at the end of this letter. The exemption number(s) indicated by a mark appearing in the block to the left of the subsection cited constitutes the authority for withholding the deleted material. An enclosure to this letter explains these exemptions in more detail.

The rules and regulations of the Drug Enforcement Administration applicable to Freedom of Information Act requests are contained in the Code of Federal Regulations, Title 28, Part 16, as amended. They are published in the Federal Register and are available for inspection by members of the public.

Case Number: 12-00354-F

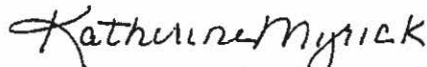
Page 2

If you wish to appeal any denial of your request, you must make your appeal in writing and it must be received by the Office of Information Policy within sixty (60) days of the date of this letter pursuant to 28 C.F.R. § 16.9. The appeal should be sent to the following address, with the envelope marked "FOIA Appeal":

DEPARTMENT OF JUSTICE
OFFICE OF INFORMATION POLICY
NYAV BUILDING, 11TH FLOOR
WASHINGTON, D.C. 20530

If you have any questions regarding this letter, you may contact FOI Specialist Denise Gutrick on (202) 307-7628.

Sincerely,



Katherine L. Myrick, Chief
Freedom of Information/Privacy Act Unit
FOI/Records Management Section

APPLICABLE SECTIONS OF THE FREEDOM OF INFORMATION AND/OR PRIVACY ACT:

**Freedom of Information Act
5 U.S.C. 552**

**Privacy Act
5 U.S.C. 552a**

<input type="checkbox"/> (b)(1)	<input type="checkbox"/> (b)(5)	<input checked="" type="checkbox"/> (b)(7)(C)
<input type="checkbox"/> (b)(2)	<input type="checkbox"/> (b)(6)	<input checked="" type="checkbox"/> (b)(7)(D)
<input type="checkbox"/> (b)(3)	<input checked="" type="checkbox"/> (b)(7)(A)	<input checked="" type="checkbox"/> (b)(7)(E)
<input type="checkbox"/> (b)(4)	<input type="checkbox"/> (b)(7)(B)	<input checked="" type="checkbox"/> (b)(7)(F)

<input type="checkbox"/> (d)(5)	<input type="checkbox"/> (k)(2)
<input checked="" type="checkbox"/> (j)(2)	<input type="checkbox"/> (k)(5)
<input type="checkbox"/> (k)(1)	<input type="checkbox"/> (k)(6)

FREEDOM OF INFORMATION ACT
SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) Information which is currently and properly classified pursuant to Executive Order in the interest of the national defense or foreign policy.
- (b)(2) Materials related solely to the internal rules and practices of DEA.
- (b)(3) Information specifically exempted from disclosure by another federal statute.
- (b)(4) Privileged or confidential information obtained from a person, usually involving commercial or financial matters.
- (b)(5) Inter-agency or intra-agency documents which are subject to a privilege, such as documents the disclosure of which would have an inhibitive effect upon the development of policy and administrative direction, or which represent the work product of an attorney, or which reflect confidential communications between a client and an attorney.
- (b)(6) Materials contained in sensitive records such as personnel or medical files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
- (b)(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings; (B) would deprive a person of a right to a fair trial or an impartial adjudication; (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy; (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis; and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source; (E) would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual.

PRIVACY ACT
SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) Materials compiled in reasonable anticipation of a civil action or proceeding.
- (j)(2) Material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals.
- (k)(1) Information which is currently and properly classified pursuant to Executive Order in the interest of the national defense or foreign policy.
- (k)(2) Material compiled during civil investigations for law enforcement purposes.
- (k)(5) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to an express promise that his identity would be held in confidence, or pursuant to an implied promise of confidentiality if such information was furnished prior to September 27, 1975.
- (k)(6) The substance of tests used to determine individual qualifications for appointment or promotion in Federal Government Service.

Exhibit K

July 26, 2012

Department of Justice
Office of Information Policy
NYAV Building, 11th Floor
Washington, D.C. 20530

Re: Freedom of Information Act Appeal for Mattathias Schwartz

Dear Sir or Madam:

We represent Mattathias Schwartz, and we write to appeal the Drug Enforcement Administration's denial of Mr. Schwartz's Freedom of Information Act request in Case Number 12-00021-FR.

I. Background

On July 25, 2011, Mr. Schwartz made an expedited FOIA request to U.S. Customs and Border Protection (CBP) for all video recordings and written accounts of a raid on Tivoli Gardens in Kingston, Jamaica that took place on May 24, 2010 and all video recordings and written accounts of military or security operations in Tivoli Gardens on May 25, 2010 and May 26, 2010. A copy of his request is enclosed.

On September 26, 2011, U.S. Customs and Border Protection (CBP) replied to this request, releasing a three-page report that confirmed the existence of a video that it had created "at the request of and in support of" the Drug Enforcement Administration (DEA). The report revealed that CBP had conducted aerial surveillance to support the DEA in "serving an extradition warrant and extraction" of Christopher Coke, the head of a powerful Jamaican drug gang. A copy of CBP's response to Mr. Schwartz's request, including the released report, is enclosed.

On February 8, 2012, CBP replied to an appeal that Mr. Schwartz had filed in response to that agency's decision to release the three-page report but not the surveillance video. In its reply, CBP argued that because CBP had created the video or videos at the behest of the DEA, it would defer to the DEA with respect to FOIA requests for those video or videos. A copy of CBP's response to Mr. Schwartz's appeal is enclosed.

On June 4, 2012, the DEA sent Mr. Schwartz a form letter acknowledging receipt of six (6) DVD diskettes pursuant to his request—forwarded from CBP— but denying that request under FOIA Exemptions 7(A), 7(C), 7(D), 7(E) and 7(F) and Privacy Act Exemption (j)(2). The letter did not discuss how the Exemptions might be applicable to the records sought by Mr. Schwartz, nor did it include any details specific to those records to show that the DEA had made reasonable efforts to identify and review them. A copy of the DEA's response is enclosed.

II. Bases for Appeal

The records that Mr. Schwartz has requested cannot be validly protected under any of the cited Exemptions, and must be released pursuant to FOIA. Even if portions of the records sought may arguably be withheld, any nonexempt portions of the records can and must be released. Mr. Schwartz's request concerns an event of great public interest, and the release of the requested records will serve that interest by contributing to the public's understanding of the events surrounding the 2010 extradition of Christopher "Dudus" Coke from Jamaica.

A. Records Requested by Mr. Schwartz Are Not Protectable Under Any Cited Exemptions.

a. Exemption 7

Exemption 7 protects certain enumerated categories of law enforcement records. Specifically, the DEA cited the following categories in denying Mr. Schwartz's request: 7(A), which protects law enforcement records that "could reasonably be expected to interfere with enforcement proceedings"; 7(C), which protects law enforcement records that "could reasonably be expected to constitute an unwarranted invasion of personal privacy"; 7(D), which protects law enforcement records that "could reasonably be expected to disclose the identity of a confidential source"; 7(E), which protects law enforcement records that would "disclose techniques and procedures for law enforcement investigations or prosecutions"; and 7(F), which protects law enforcement records that "could reasonably be expected to endanger the life or physical safety of any individual." None of these exemptions are applicable to Mr. Schwartz's request.

Exemption 7(A) is inapplicable to Mr. Schwartz's request, because the records he seeks could not "reasonably be expected to interfere with enforcement proceedings." 5 U.S.C. § 552(b)(7)(A). As CBP had revealed to Mr. Schwartz, the video or videos being sought were created for the specific purpose of assisting the DEA's extraction of Mr. Coke for his criminal charges in the United States. Thus, their release could only be disruptive of law enforcement activities *if such activities were ongoing against Mr. Coke*. Mr. Coke, however, has already pleaded guilty to those charges in exchange for the government's explicit promise to halt its prosecution. *See* Letter from Preet Bharara, U.S. Att'y, S. Dist. of N.Y., to Stephen H. Rosen & Frank A. Doddato, Att'ys for Christopher Coke (Aug. 30, 2011), *available at* http://www.justice.gov/dea/pubs/states/newsrel/2011/nyc083111_coke-plea_agreement.pdf. The release of the video or videos cannot interfere with enforcement proceedings if those enforcement proceedings have been halted. *See New England Med. Ctr. Hosp. v. N.L.R.B.*, 548 F.2d 377, 386 (1st Cir. 1976) ("Congress clearly wished to ensure that investigatory files would not remain exempt because of their character as investigatory files beyond the time that a possible law enforcement action necessitated their disclosure."). Indeed, Mr. Coke has since been sentenced to, and publicly expressed his intention not to appeal, a prison term of 23 years, thus ending all proceedings against him, whether law enforcement or judicial. *See Jamaican Drug Kingpin "Dudus" Coke Jailed for 23 Years*, BBC NEWS (June 8, 2012), <http://www.bbc.co.uk/news/world-us-canada-18371383>. The video or videos cannot possibly "reasonably be expected to interfere with enforcement proceedings" if no such proceedings are occurring in the present or the foreseeable future.

Exemption 7(C) is inapplicable to Mr. Schwartz's request, because the records he seeks could not "reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(7)(C). First, Mr. Coke's status as a public figure in Jamaica and his widely reported extradition to and prosecution in the United States severely diminish any claim of privacy that he may have. Moreover, as noted in the preceding paragraph, the CBP report describing the video does not contain any references to Mr. Coke, suggesting that he was not captured on the video or videos. While the video or videos in question may implicate the privacy interests of third parties, the DEA can adequately protect those interests by blurring, scrambling, silencing or otherwise redacting as necessary. The CBP report makes clear that the footage was shot from an aerial surveillance vehicle and that most if not all shots were sufficiently wide such that the identification of specific individuals is unlikely. Thus, the video or videos should not be unduly burdensome to redact. Finally, in applying Exemption 7(C), the government must weigh the privacy interests against the public interest. *U.S. Dep't of Def. v. Fed. Labor Relations Auth.*, 510 U.S. 487, 495 (1994). As we will address below, the public interest in the records sought is extraordinarily high.

Exemption 7(D) is inapplicable to Mr. Schwartz's request, because the records he seeks could not "reasonably be expected to disclose the identity of a confidential source." 5 U.S.C. § 552(b)(7)(D). As discussed in the preceding paragraph, given the nature of the footage, identification of any individuals who could be confidential sources is unlikely. But even if such identifications could be made from the footage, the DEA can redact as necessary before releasing the video or videos.

Exemption 7(E) is inapplicable to Mr. Schwartz's request, because the records he seeks would not disclose law enforcement techniques, procedures or guidelines that could reasonably be expected to risk circumvention of the law. 5 U.S.C. § 552(b)(7)(E). Law enforcement techniques that are widely known are not covered by this Exemption. *Davin v. U.S. Dept. of Justice*, 60 F.3d 1043, 1064 (3d Cir. 1995). By its nature, aerial surveillance is a highly public law enforcement activity—indeed, during the operation in question, at least one local journalist had seen, identified and photographed the CBP surveillance vehicle. See Mattathias Schwartz, *A Massacre in Jamaica*, THE NEW YORKER, Dec. 12, 2011, available at http://www.newyorker.com/reporting/2011/12/12/111212fa_fact_schwartz. Additionally, according to the CBP report, the video or videos do not seem to have captured any of the DEA's law enforcement activities.

Exemption 7(F) is inapplicable to Mr. Schwartz's request, because the records he seeks could not "reasonably be expected to endanger the life or physical safety of any individual." 5 U.S.C. § 552(b)(7)(F). The primary question in Exemption 7(F) analysis is "whether there is some nexus between disclosure and possible harm." *Miller v. U.S. Dept. of Justice*, 562 F. Supp. 2d 82, 124 (D.D.C. 2008). Disclosures of records sought might cause harm to individuals only if the records reveal the identities of those individuals. As discussed above, the footage in question is likely shot in such a way that renders the identification of individuals difficult, and even if such identifications are possible, the DEA can redact as necessary before releasing the video or videos.

b. Exemption (j)(2) under the Privacy Act

Exemption (j)(2) under the Privacy Act is also inapplicable to Mr. Schwartz's request, because neither the records sought nor the seeker of those records is covered by the access provision of the Privacy Act. The Privacy Act covers only information that is "retriev[able] by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual." 5 U.S.C. § 552a(a)(5). Moreover, because the primary purpose of the access provision of the Privacy Act is to allow individuals to view government-maintained records of themselves so that they may correct any inaccuracies, *see Henke v. U.S. Dept. of Commerce*, 83 F.3d 1453, 1457 (D.C. Cir. 1996), it only applies to first-party requests. In other words, the Privacy Act and its exemptions are applicable only if (1) the records sought are "about individuals" and "located through use of an individual's name or other personal identifier," *and* (2) the requests are "by an individual for his own records." *See* DEPT. OF JUSTICE, FOIA Update Vol. V, No. 2, *available at* http://www.justice.gov/oip/foia_updates/Vol_V_2/page6.htm ("[T]he FOIA's exemptions are the only ones applicable for all third-party requests . . . and for all requests for non-Privacy Act material."). Because the records that Mr. Schwartz seeks are not about himself, nor are they retrievable by his name or other personal identifier, the Privacy Act is not implicated. Thus, Exemption (j)(2) is irrelevant to the instant request.

FOIA administrative appeals do not empower agencies to review the requests *de novo*. Rather, agencies must limit itself to the Exemptions already cited in affirming or reversing the initial determination.

B. Releasing Records Requested by Mr. Schwartz Is in the Public Interest.

No fewer than 74 people were killed in the operation to extract Mr. Coke to the United States. *See* Mattathias Schwartz, *A Massacre in Jamaica*, THE NEW YORKER, Dec. 12, 2011, *available at* http://www.newyorker.com/reporting/2011/12/12/111212fa_fact_schwartz. It is clear from his reporting and from the CBP report that the United States was involved in the operation. The American public has an enormously strong interest to learn about the degree to which domestic law enforcement agencies are expending their resources abroad, cooperating with foreign law enforcement authorities and participating in foreign affairs, especially in an incident as controversial and as fatal as this one. The aerial surveillance video or videos would assist the public in gaining a fuller understanding of the event and the government's role in it.

III. Request for Relief

For the foregoing reasons, we respectfully request that your Office reverse the decision denying Mr. Schwartz access to the requested records and grant his original request. In any event, we trust that we will receive your decision within 20 business days, as required by the statute.

Very truly yours,

/s/ Lynn Oberlander
Lynn Oberlander

Cc: Mattathias Schwartz
Nick Thompson

Exhibit L

July 26, 2012

Department of Justice
Office of Information Policy
NYAV Building, 11th Floor
Washington, D.C. 20530

Re: Freedom of Information Act Appeal for Mattathias Schwartz

Dear Sir or Madam:

We represent Mattathias Schwartz, and we write to appeal the Drug Enforcement Administration's denial of Mr. Schwartz's Freedom of Information Act request in Case Number 12-00354-F.

I. Background

On May 30, 2012, Mr. Schwartz made an expedited FOIA request to the Drug Enforcement Administration (DEA) for all video recordings and digital images of a raid on Tivoli Gardens in Kingston, Jamaica that took place on May 24, 2010 and all video recordings and digital images of military or security operations in Tivoli Gardens on May 25, 2010 and May 26, 2010. A copy of his request is enclosed.

On June 21, 2012, the DEA replied with a form letter denying Mr. Schwartz's request under FOIA Exemptions 7(A), 7(C), 7(D), 7(E) and 7(F) and Privacy Act Exemption (j)(2). The letter did not discuss how the Exemptions might be applicable to the records sought by Mr. Schwartz, nor did it include any details specific to those records to show that the DEA had made reasonable efforts to identify and review them. A copy of the DEA's response is enclosed.

On September 26, 2011, U.S. Customs and Border Protection (CBP) replied to a separate request that Mr. Schwartz had made to that agency for the same records. In its response, CBP released a three-page report that confirmed the existence of a video that it had created "at the request of and in support of" the DEA. The report revealed that CBP had conducted aerial surveillance to support the DEA in "serving an extradition warrant and extraction" of Christopher Coke, the head of a powerful Jamaican drug gang. A copy of CBP's response to Mr. Schwartz's request, including the released report, is enclosed.

On February 8, 2012, CBP replied to an appeal that Mr. Schwartz had filed in response to that agency's decision to release the three-page report but not the surveillance video. In its reply, CBP argued that because CBP had created the video or videos at the behest of the DEA, it would defer to the DEA with respect to FOIA requests for those video or videos. A copy of CBP's response to Mr. Schwartz's appeal is enclosed.

II. Bases for Appeal

The records that Mr. Schwartz has requested cannot be validly protected under any of the cited Exemptions, and must be released pursuant to FOIA. Even if portions of the records sought may arguably be withheld, any nonexempt portions of the records can and must be released. Mr. Schwartz's request concerns an event of great public interest, and the release of the requested records will serve that interest by contributing to the public's understanding of the events surrounding the 2010 extradition of Christopher "Dudus" Coke from Jamaica.

A. Records Requested by Mr. Schwartz Are Not Protectable Under Any Cited Exemptions.

a. Exemption 7

Exemption 7 protects certain enumerated categories of law enforcement records. Specifically, the DEA cited the following categories in denying Mr. Schwartz's request: 7(A), which protects law enforcement records that "could reasonably be expected to interfere with enforcement proceedings"; 7(C), which protects law enforcement records that "could reasonably be expected to constitute an unwarranted invasion of personal privacy"; 7(D), which protects law enforcement records that "could reasonably be expected to disclose the identity of a confidential source"; 7(E), which protects law enforcement records that would "disclose techniques and procedures for law enforcement investigations or prosecutions"; and 7(F), which protects law enforcement records that "could reasonably be expected to endanger the life or physical safety of any individual." None of these exemptions are applicable to Mr. Schwartz's request.

Exemption 7(A) is inapplicable to Mr. Schwartz's request, because the records he seeks could not "reasonably be expected to interfere with enforcement proceedings." 5 U.S.C. § 552(b)(7)(A). As CBP had revealed to Mr. Schwartz, the video or videos being sought were created for the specific purpose of assisting the DEA's extraction of Mr. Coke for his criminal charges in the United States. Thus, their release could only be disruptive of law enforcement activities *if such activities were ongoing against Mr. Coke*. Mr. Coke, however, has already pleaded guilty to those charges in exchange for the government's explicit promise to halt its prosecution. *See* Letter from Preet Bharara, U.S. Att'y, S. Dist. of N.Y., to Stephen H. Rosen & Frank A. Doddato, Att'ys for Christopher Coke (Aug. 30, 2011), *available at* http://www.justice.gov/dea/pubs/states/newsrel/2011/nyc083111_coke-plea_agreement.pdf. The release of the video or videos cannot interfere with enforcement proceedings if those enforcement proceedings have been halted. *See New England Med. Ctr. Hosp. v. N.L.R.B.*, 548 F.2d 377, 386 (1st Cir. 1976) ("Congress clearly wished to ensure that investigatory files would not remain exempt because of their character as investigatory files beyond the time that a possible law enforcement action necessitated their disclosure."). Indeed, Mr. Coke has since been sentenced to, and publicly expressed his intention not to appeal, a prison term of 23 years, thus ending all proceedings against him, whether law enforcement or judicial. *See Jamaican Drug Kingpin "Dudus" Coke Jailed for 23 Years*, BBC NEWS (June 8, 2012), <http://www.bbc.co.uk/news/world-us-canada-18371383>. The video or videos cannot possibly "reasonably be expected to interfere with enforcement proceedings" if no such proceedings are occurring in the present or the foreseeable future.

Exemption 7(C) is inapplicable to Mr. Schwartz's request, because the records he seeks could not "reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(7)(C). First, Mr. Coke's status as a public figure in Jamaica and his widely reported extradition to and prosecution in the United States severely diminish any claim of privacy that he may have. Moreover, as noted in the preceding paragraph, the CBP report describing the video does not contain any references to Mr. Coke, suggesting that he was not captured on the video or videos. While the video or videos in question may implicate the privacy interests of third parties, the DEA can adequately protect those interests by blurring, scrambling, silencing or otherwise redacting as necessary. The CBP report makes clear that the footage was shot from an aerial surveillance vehicle and that most if not all shots were sufficiently wide such that the identification of specific individuals is unlikely. Thus, the video or videos should not be unduly burdensome to redact. Finally, in applying Exemption 7(C), the government must weigh the privacy interests against the public interest. *U.S. Dep't of Def. v. Fed. Labor Relations Auth.*, 510 U.S. 487, 495 (1994). As we will address below, the public interest in the records sought is extraordinarily high.

Exemption 7(D) is inapplicable to Mr. Schwartz's request, because the records he seeks could not "reasonably be expected to disclose the identity of a confidential source." 5 U.S.C. § 552(b)(7)(D). As discussed in the preceding paragraph, given the nature of the footage, identification of any individuals who could be confidential sources is unlikely. But even if such identifications could be made from the footage, the DEA can redact as necessary before releasing the video or videos.

Exemption 7(E) is inapplicable to Mr. Schwartz's request, because the records he seeks would not disclose law enforcement techniques, procedures or guidelines that could reasonably be expected to risk circumvention of the law. 5 U.S.C. § 552(b)(7)(E). Law enforcement techniques that are widely known are not covered by this Exemption. *Davin v. U.S. Dept. of Justice*, 60 F.3d 1043, 1064 (3d Cir. 1995). By its nature, aerial surveillance is a highly public law enforcement activity—indeed, during the operation in question, at least one local journalist had seen, identified and photographed the CBP surveillance vehicle. *See* Mattathias Schwartz, *A Massacre in Jamaica*, THE NEW YORKER, Dec. 12, 2011, available at http://www.newyorker.com/reporting/2011/12/12/111212fa_fact_schwartz. Additionally, according to the CBP report, the video or videos do not seem to have captured any of the DEA's law enforcement activities.

Exemption 7(F) is inapplicable to Mr. Schwartz's request, because the records he seeks could not "reasonably be expected to endanger the life or physical safety of any individual." 5 U.S.C. § 552(b)(7)(F). The primary question in Exemption 7(F) analysis is "whether there is some nexus between disclosure and possible harm." *Miller v. U.S. Dept. of Justice*, 562 F. Supp. 2d 82, 124 (D.D.C. 2008). Disclosures of records sought might cause harm to individuals only if the records reveal the identities of those individuals. As discussed above, the footage in question is likely shot in such a way that renders the identification of individuals difficult, and even if such identifications are possible, the DEA can redact as necessary before releasing the video or videos.

b. Exemption (j)(2) under the Privacy Act

Exemption (j)(2) under the Privacy Act is also inapplicable to Mr. Schwartz's request, because neither the records sought nor the seeker of those records is covered by the access provision of the Privacy Act. The Privacy Act covers only information that is "retriev[able] by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual." 5 U.S.C. § 552a(a)(5). Moreover, because the primary purpose of the access provision of the Privacy Act is to allow individuals to view government-maintained records of themselves so that they may correct any inaccuracies, *see Henke v. U.S. Dept. of Commerce*, 83 F.3d 1453, 1457 (D.C. Cir. 1996), it only applies to first-party requests. In other words, the Privacy Act and its exemptions are applicable only if (1) the records sought are "about individuals" and "located through use of an individual's name or other personal identifier," *and* (2) the requests are "by an individual for his own records." *See* DEPT. OF JUSTICE, FOIA Update Vol. V, No. 2, *available at* http://www.justice.gov/oip/foia_updates/Vol_V_2/page6.htm ("[T]he FOIA's exemptions are the only ones applicable for all third-party requests . . . and for all requests for non-Privacy Act material."). Because the records that Mr. Schwartz seeks are not about himself, nor are they retrievable by his name or other personal identifier, the Privacy Act is not implicated. Thus, Exemption (j)(2) is irrelevant to the instant request.

FOIA administrative appeals do not empower agencies to review the requests *de novo*. Rather, agencies must limit itself to the Exemptions already cited in affirming or reversing the initial determination.

B. Releasing Records Requested by Mr. Schwartz Is in the Public Interest.

No fewer than 74 people were killed in the operation to extract Mr. Coke to the United States. *See* Mattathias Schwartz, *A Massacre in Jamaica*, THE NEW YORKER, Dec. 12, 2011, *available at* http://www.newyorker.com/reporting/2011/12/12/111212fa_fact_schwartz. It is clear from his reporting and from the CBP report that the United States was involved in the operation. The American public has an enormously strong interest to learn about the degree to which domestic law enforcement agencies are expending their resources abroad, cooperating with foreign law enforcement authorities and participating in foreign affairs, especially in an incident as controversial and as fatal as this one. The aerial surveillance video or videos would assist the public in gaining a fuller understanding of the event and the government's role in it.

III. Request for Relief

For the foregoing reasons, we respectfully request that your Office reverse the decision denying Mr. Schwartz access to the requested records and grant his original request. In any event, we trust that we will receive your decision within 20 business days, as required by the statute.

Very truly yours,

/s/ Lynn Oberlander
Lynn Oberlander

Cc: Mattathias Schwartz
Nick Thompson

Exhibit M



U.S. Department of Justice

Office of Information Policy

Telephone: (202) 514-3642

Washington, D.C. 20530

AUG - 8 2012

Lynn Oberlander, Esq.
The New Yorker
4 Times Square
New York, NY 10036

Re: Request No. 12-00021-FR – Mattathias Schwartz

Dear Ms. Oberlander:

This is to advise you that your administrative appeal from the action of the Drug Enforcement Administration was received by this Office on August 1, 2012.

The Office of Information Policy has the responsibility of adjudicating such appeals. In an attempt to afford each appellant equal and impartial treatment, we have adopted a general practice of assigning appeals in the approximate order of receipt. Your appeal has been assigned number **AP-2012-03012**. Please mention this number in any future correspondence to this Office regarding this matter.

We will notify you of the decision on your appeal as soon as we can. If you have any questions about the status of your appeal you may contact me at the number above.

Sincerely,

A handwritten signature in cursive script, appearing to read "Priscilla Jones".

Priscilla Jones
Supervisory Administrative Specialist